

Serial No. 10/765,829

Attorney Docket No. 26DT-001-DIV

REMARKS

In part 12 of the Office Action Summary, none of the boxes are checked. However, the applicants filed a certified copy of the priority document with the parent application. Furthermore, the filing receipt acknowledges the foreign priority applications. Therefore, the applicants respectfully request an indication of the acknowledgement of the claim for priority under section 119 and that the priority papers have been received.

The applicants acknowledge and appreciate receiving an initialed copy of the form PTO 1449 that was filed on 29 January 2004.

Claims 10 – 12 and 18 – 25 are pending. Claims 10 – 12 have been withdrawn. The applicants respectfully request reconsideration and allowance of this application in view of the above amendments and the following remarks.

Claims 18 – 24 were rejected under 35 USC 112, second paragraph, as being indefinite. The rejection is respectfully traversed for reasons including the following.

When a claim “is not insolubly ambiguous, it is not invalid for indefiniteness.” *Marley Mouldings, Ltd. V. Mikron Industries*, 417 F.3d 1356, 1361 (Fed. Cir. 1005). The failure to provide a missing antecedent clause does not render the claim(s) indefinite. E.g., *Slimfold Mfg. Co. v. Kinkead Indus., Inc.*, 810 F.2d 1113, 1117 (Fed. Cir. 1987); *Energizer Holdings, Inc. v. International Trade Commission*, Fed. Cir. No. 05-1018 (Fed. Cir. 1/25/2006).

It is respectfully submitted that the recitations that were identified in the office action as being indefinite should merely have been objected to. Nevertheless, the antecedent bases have been corrected by way of the above amendment.

Serial No. 10/765,829

Attorney Docket No. 26DT-001-DIV

Also, the phrase "cord-shaped" has been replaced by the suggested word "elongate", and the structure of the engaged component has been clarified. Accordingly, the examiner is respectfully requested to reconsider and withdraw the rejection.

Claims 18 and 19 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 4,545,495, Kinsley ("Kinsley"). Claim 18 has been amended to clarify the detachable component and the vehicle body member. Support for the amendment is located in the specification as filed, for example, Figs. 32 – 34, page 41, lines 3 – 18, and page 45, lines 5 – 11. Insofar as the rejection can be applied to the claims as amended, the rejection is respectfully traversed, for reasons including the following which are provided by way of example.

Claim 18 recites, in combination, for example, "an attachment formed on an end of the tether for attaching to a vehicle body member; and a detachable component having a detent formed on the cap retainer and an engaged component formed on a portion of the tether adjacent to the attachment, the engaged component being detachably attached to the detent." Claim 18 further recites "wherein the vehicle body member is an attaching member that is disposed in a periphery of a fueling inlet and is exposed to the outside when a lid panel covering the fuel cap is opened for fueling."

In operation, the detachable component suspends the fuel cap at the position adjacent to the attachment by engaging an engaged component with a detent of the cap retainer, thereby preventing the fuel cap from becoming an obstacle during fueling. Also, the vehicle body member is an attaching member that is disposed in a periphery of a fueling inlet and is exposed outside when a lid panel is opened for fueling.

Serial No. 10/765,829

Attorney Docket No. 26DT-001-DIV

Without conceding that Kinsley discloses any feature of the present invention, according to Kinsley, the member to attach the tether is a peripheral member of the inlet, not of a lid of the vehicle.

The office action asserts that Kinsley discloses the invention as claimed. To the contrary, Kinsley fails to teach or suggest the invention, as presently claimed, when the claims are considered as a whole. Kinsley fails to teach or suggest, for example, "an engaged component formed on a portion of the tether adjacent to the attachment." To the contrary, as explained in the office action, Kinsley Figs. 2 and 3 illustrate "an engaged component formed on an end of the tether at 72, 82." However, the engaged component 72, 82 is not formed on a portion of the tether adjacent to the attachment 26. Moreover, Kinsley fails to teach or suggest a construction that suspends the tether to the member.

Kinsley fails to teach or suggest, for example, these elements recited in independent claim 18. It is respectfully submitted therefore that claim 18 is patentable over Kinsley.

For at least these reasons, the combination of features recited in independent claim 18, when interpreted as a whole, is submitted to patentably distinguish over the prior art. In addition, Kinsley clearly fails to show other recited elements as well.

Claims 18 and 19 were rejected under 35 USC 103(a) as being unpatentable over Kinsley, in view of the examiner's Official Notice. The applicants respectfully request that this rejection be withdrawn for the following reasons.

The arguments above with regard to Kinsley are incorporated herein by reference, but will not be repeated for the sake of clarity. To the extent that "it can be argued the end portion of the tether 70 and the retainer do not form a detent and an engaged portion," as proposed in the

Serial No. 10/765,829

Attorney Docket No. 26DT-001-DIV

office action, the examiner argues that it would have been obvious to modify Kinsley as further detailed in the office action, based on Official Notice.

The examiner appears to be relying on personal knowledge to support the finding of what is known in the art. The taking of Official Notice is respectfully traversed, and the examiner is requested to provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. MPEP 2144.03 See 37 CFR 1.104(d)(2). An examiner cannot simply reach conclusions based on their own understanding, or experience, or assessment of what would be basic knowledge or common sense. Rather, there must be some concrete evidence in the record in support of these findings. *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Moreover, the examiner's expertise "may provide sufficient support for conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697.

It appears that the examiner is utilizing the noticed fact to provide a motivation to modify Kinsley; hence, the noticed fact is clearly not a peripheral issue. Accordingly, it is inappropriate for the examiner to rely on official notice, and the examiner is requested to provide the above-mentioned affidavit or declaration.

For reasons including the foregoing, it is respectfully submitted that the claims are allowable over Kinsley.

With respect to the rejected dependent claim, applicants respectfully submit that this claim is allowable not only by virtue of its dependency from independent claims 18, but also because of additional features it recites in combination.

New claim 25 has been added, and is deemed to be allowable for reasons including those provided above. Support for the new claims is located in the specification as filed, for example, page 45, lines 12 – 14.

Serial No. 10/765,829

Attorney Docket No. 26DT-001-DIV

Applicants respectfully submit that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicants do not concede that the cited prior art shows any of the elements recited in the claims. However, applicants have provided specific examples of elements in the claims that are clearly not present in the cited prior art.

Applicants strongly emphasize that one reviewing the prosecution history should not interpret any of the examples applicants have described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, for the sake of simplicity, applicants have provided examples of why the claims described above are distinguishable over the cited prior art.

The office action indicates that claims 20 – 24 have allowable subject matter. The claims have not been rewritten because they depend are believed to depend from allowable claims.

In view of the foregoing, the applicants submit that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the examiner is invited to contact the undersigned by telephone.

If there are any problems with the payment of fees, please charge any underpayments and credit any overpayments to Deposit Account No. 50-1147.

Respectfully submitted,



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